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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0025]

Notice of Buy America Waiver for Track Turnout Component

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to a Buy America waiver request from the Long Island Rail Road (LIRR), a subsidiary of the New York Metropolitan Transportation Authority (MTA), the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the movable point frog component of one track turnout that LIRR needs for Stage 1.1 of its Jamaica Station Capacity Improvements Project, Phase I (JCI-Phase 1 Project). The turnout itself, however, is subject to FTA's Buy America requirements and, accordingly, the turnout must be manufactured in the United States.

This Buy America waiver does not apply to track turnout components for Stages 2.0.1, 2.0.2, 2.0.3, and any other stages of LIRR's JCI-Phase I Project, or for LIRR's State of Good Repair Program, as LIRR has withdrawn such waiver requests through correspondence dated February 9, 2015, February 13, 2015, and June 25, 2015. Moreover, this Buy America waiver does not apply to track turnout components needed for the Northeast Corridor Congestion Relief Project at Harold Interlocking, for which the Federal Railroad Administration (FRA) granted a Buy America waiver on May 15, 2015, as FRA funds are being used for that project.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366-4011 or Richard.Wong@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA is granting a non-availability Buy America waiver for the movable point frog component (also known and referred to as a “vee point”) on one track turnout that LIRR needs for Stage 1.1 of LIRR’s JCI-Phase I Project.

FTA is providing LIRR with Federal funds to support its JCI-Phase I Project, the total cost of which is approximately \$301,653,240. With certain exceptions, FTA’s Buy America requirements prevent FTA from obligating Federal funds for a project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C. 5323(j)(1) (2012). All “manufactured end products” must be produced in the United States, and FTA considers a manufactured product to be produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States, and (2) all of the components of the product are of U.S. origin. 49 CFR 661.5(d) (2014). FTA considers a component to be of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d)(2). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a non-availability waiver of these requirements. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

Through the JCI-Phase I Project, LIRR will reconfigure its tracks in Jamaica Station, construct a new passenger platform to facilitate LIRR service to Atlantic Terminal, and increase capacity for LIRR train service into the new Grand Central Terminal following completion of the

East Side Access Project. Currently, Jamaica Station is one of the busiest stations in LIRR's system, with over 250,000 customers and 500 trains passing through the station each weekday.

Phase 1 of the project is divided into Stages 1 and 2.

The scope of work for the project involves the installation of new track turnouts. In June 2013, LIRR issued a solicitation for two turnouts containing rail bound magnesium frogs in connection with Stage 1 of the JCI-Phase I Project. On May 16, 2014, LIRR awarded Contract Number 6121 to Picone Schiavone II, which certified its compliance with FTA's Buy America requirements for the track turnouts. Following the award, LIRR determined that these turnouts would be insufficient to meet LIRR's operational needs. Accordingly, LIRR revised its specifications for the project to include two turnouts with movable point frogs, which is the component type that is the subject of this waiver.

The movable point frogs are essential components of track turnouts, and LIRR indicated that it needs them for the following operational reasons: (1) they are necessary to withstand the frequent and heavy use by passenger and freight trains traveling along LIRR's right of way; (2) they allow trains to travel through the turnouts at higher speeds, ultimately providing more throughput during rush hour; (3) they reduce impact loading to the turnouts; and (4) they provide for less wear and tear, thereby requiring less overall maintenance, extending the useful lives of the turnouts, and resulting in fewer outages and negative impacts on LIRR's operations. Picone Schiavone II advised LIRR that it was unable to certify compliance with FTA's Buy America requirements based upon LIRR's new specifications requiring movable point frogs as components of the track turnouts.

By letter dated September 19, 2014, LIRR requested a non-availability Buy America waiver for four components that LIRR needs for ten track turnouts on Stages 1.1, 2.0.1, 2.0.2,

and 2.0.3 of its JCI-Phase I Project. Those four components are the Schvihag roller assemblies, Schvihag plates, ZU1-60 steel switch point rail sections, and the movable point frogs. At the time that LIRR submitted its waiver request, none of these turnout components were manufactured in the United States. The roller assemblies and plates were manufactured in Switzerland, the ZU1-60 steel switch point rail sections were manufactured in Austria, and the movable point frogs were manufactured in Germany.

Based on previous solicitations, LIRR concluded that it was unable to identify a domestic source for these four track turnout components. LIRR also pointed to market research and manufacturer outreach that it had conducted for a prior Buy America waiver request related to the East Side Access Project.¹ In conducting that research, LIRR utilized the National Railroad Passenger Corporation's (Amtrak) market research, which Amtrak had conducted at the request of FRA in connection with a separate Buy America waiver request. This research included outreach to manufacturers that were previously identified by the U.S. Department of Commerce's National Institute of Standards and Technology (NIST) in a December 2012 Supplier Scouting Report. LIRR's market research indicated that there was no known company presently manufacturing, or able to domestically manufacture, the Schvihag roller assemblies, Schvihag plates, ZU1-60 steel switch point rail sections, and movable point frogs. LIRR also contacted seven additional potential manufacturers, none of whom were willing and capable of domestically producing these components.

Given LIRR's extensive market research, on December 19, 2014 FTA published a Federal Register notice requesting comment on LIRR's waiver request pursuant to 49 CFR

¹ On February 18, 2015, FTA published a **Federal Register** notice waiving its Buy America requirements for the Schvihag roller assemblies, Schvihag plates, ZU1-60 steel switch point rail sections, and movable point frogs that LIRR needed in connection with nine turnouts for VHL03 LIRR Stage 3 of the East Side Access Project and one turnout for VHL04 LIRR Stage 4. 80 FR 8753.

661.7. 79 FR 75857. The docket closed on January 20, 2015, and to date, FTA has received no comments regarding the notice.

After the docket closed, by letter dated February 13, 2015, LIRR indicated to FTA that it had become aware of alternate turnout designs that would be compatible with LIRR's infrastructure and available from a domestic manufacturer. LIRR indicated its intention to use this alternate turnout design for its programs and projects, including the JCI-Phase I Project. LIRR specified that the alternate turnout design required modification to meet LIRR's operational requirements and to ensure adequate performance and reliability, considering that over 250,000 customers and 500 trains pass through Jamaica Station each weekday.

Given the alternate design and the potential availability of the turnout components from a domestic manufacturer, LIRR narrowed its waiver request from the ten turnouts needed for Stages 1.1, 2.0.1, 2.0.2, and 2.0.3, to only two turnouts needed for Stage 1.1.

LIRR indicated that it needs the waiver for Stage 1.1 because the procurement of the turnouts in that stage is on a critical path. LIRR calculated that, absent a non-availability waiver for the components of these two turnouts, LIRR's JCI-Phase I Project would be delayed by approximately one year, based on the extended lead times for design modifications, fabrication, and delivery of the alternate turnout design. LIRR withdrew its waiver request with respect to the components of eight turnouts needed for Stages 2.0.1, 2.0.2, and 2.0.3 because the procurement of those turnouts is not on a critical path and LIRR believes that it has enough time to design, fabricate, manufacture, deliver, and install the domestic alternates without causing delays to those stages of the project.

Following LIRR's letter dated February 13, 2015, LIRR engaged in additional efforts to utilize domestic manufacturers for the project. By electronic mail dated June 25, 2015, LIRR

further narrowed its waiver request to apply to only one turnout needed for Stage 1.1 of its JCI-Phase I Project. LIRR also withdrew its request for a Buy America waiver with respect to the Schvihag roller assemblies, Schvihag plates, and the ZU1-60 steel switch point rail sections for that turnout. LIRR determined that, based on the project's redesign, LIRR could use domestically manufactured components as alternatives. LIRR limited its waiver request to just the movable point frog needed for a single turnout in Stage 1.1.

Based upon LIRR's good faith efforts to identify domestic manufacturers for the turnout components and redesign the project, LIRR's informed conclusion that there are presently no U.S. manufacturers that are willing and capable of producing the movable point frog critically needed for the project, and the lack of responses to FTA's Federal Register notice, FTA hereby issues a non-availability waiver to LIRR, pursuant to 49 CFR 661.7(c), for the movable point frog component needed for one turnout in Stage 1.1 of the JCI-Phase I Project. This waiver does not apply to the turnout itself, and accordingly, the turnout must be manufactured in the United States pursuant to FTA's Buy America requirements.

This Buy America waiver does not apply to track turnout components for Stages 2.0.1, 2.0.2, 2.0.3, and any other stages of LIRR's JCI-Phase I Project, or for LIRR's State of Good Repair Program, as LIRR has withdrawn such waiver requests. Furthermore, this Buy America waiver does not apply to track turnout components needed for the Northeast Corridor Congestion Relief Project at Harold Interlocking, for which FRA granted a Buy America waiver on May 15, 2015, as FRA funds are being used for that project.

Issued on August 21, 2015.

Dana Nifosi
Acting Chief Counsel
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